

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:	:	Case No. 17-17361
	:	
Richard M. Osborne,	:	Chapter 7
	:	
Debtor.	:	Hon. Arthur I. Harris
_____	:	
	:	
Kari B. Coniglio, Trustee,	:	Adv. Pro. No. 20-01013
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
Richard M. Osborne, Sr., <i>et al.</i> ,	:	
	:	
Defendants.	:	

**ANSWER OF OSAIR, INC. TO TRUSTEE’S COMPLAINT TO (I) SUBSTANTIVELY
CONSOLIDATE NON-DEBTOR ENTITIES; (II) AVOID AND RECOVER
PREFERENTIAL TRANSFERS; (III) AVOID AND RECOVER FRAUDULENT
TRANSFERS; (IV) AVOID AND RECOVER UNAUTHORIZED POST-PETITION
TRANSFERS; (V) OBJECT TO CERTAIN CLAIMS; (VI) DETERMINE SECURED
STATUS AND PRIORITY; (VII) OBTAIN AN ACCOUNTING; AND (VIII)
DETERMINE VALIDITY AND PRIORITY OF LIENS**

Defendant OsAir, Inc. (“OsAir”) states as follows for its answer to the *Complaint to (i) Substantively Consolidate Non-Debtor Entities; (ii) Avoid and Recover Preferential Transfers; (iii) Avoid and Recover Fraudulent Transfers; (iv) Avoid and Recover Unauthorized Post-Petition Transfers; (v) Object to Certain Claims; (vi) Determine Secured Status and Priority; (vii) Obtain an Accounting; and (viii) Determine Validity and Priority of Liens* filed on February 10, 2020 [Doc. #1] (the “Complaint”) by Trustee Kari B. Coniglio (the “Trustee”) for the chapter 7 estate of Debtor Richard M. Osborne (the “Debtor”):

Introduction¹

1. OsAir lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1.

2. OsAir admits the allegations contained in paragraph 2.

3. OsAir admits the allegations contained in paragraph 3.

4. OsAir admits the allegations contained in paragraph 4.

5. OsAir admits the allegations contained in paragraph 5.

Jurisdiction and Venue

6. OsAir denies the allegations contained in paragraph 6. except that OsAir admits that this bankruptcy court has jurisdiction over this adversary proceeding pursuant to 28 USC §§ 157(a), 1334(b) and (e), and General Order 2012-7 of the United States District Court for the Northern District of Ohio.

7. In response to the allegations contained in paragraph 7. of the Trustee's Complaint OsAir admits that this adversary proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), (F), (E), (K) and (O). To the extent that the matters herein are determined not to be core proceedings, they are related to the bankruptcy case referenced above and OsAir consents to the referral of this adversary proceeding to the bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under 28 U.S.C. § 158.

8. OsAir admits the allegations contained in both paragraphs numbered 8.

9. OsAir admits the allegations contained in paragraph 9.

10. OsAir admits the allegations contained in paragraph 10.

¹ OsAir reproduces the Trustee's headings herein solely as an organizational guide and not as an admission of the truth of allegations therein.

11. OsAir admits the allegations contained in paragraph 11.

12. OsAir lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 12.

13. OsAir lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 13.

Factual Background

Obligations Owed to OsAir

14. OsAir admits that OsAir extended a loan to Rigrtona Trust in the amount alleged in paragraph 14.

15. OsAir admits the allegations contained in paragraph 15.

16. OsAir admits the allegations contained in paragraph 16.

RMO, Inc.

17. OsAir lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 17.

18. OsAir admits the allegations contained in paragraph 18.

19. OsAir lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 19.

20. OsAir admits the allegations contained in paragraph 20.

21. OsAir denies the allegations contained in paragraph 21. Further answering, OsAir admits that payments were made to Diane Osborne from the RMO Inc. account.

22. OsAir denies the allegations contained in paragraph 22. OsAir admits RMO, Inc. had a checking account at Erie Bank a division of CNB Bank.

23. OsAir admits the allegations contained in paragraph 23.

24. OsAir denies the allegations contained in paragraph 24.

Rigrtona Holding

25. OsAir denies the allegations contained in paragraph 25.

26. OsAir admits the allegations contained in paragraph 26.

27. OsAir admits the allegations contained in paragraph 27.

28. OsAir admits the allegations contained in paragraph 28.

29. OsAir admits the allegations contained in paragraph 29.

30. OsAir denies the allegations contained in paragraph 30. Further answering, Home Savings received \$205,213.07.

31. OsAir denies in part the allegations contained in paragraph 31. Further answering, the payment to Home Savings was also made on behalf of other entities and other loans to Home Savings and to settle several outstanding obligations and litigation among Home Savings, the Debtor and other entities owned or controlled by the Debtor.

32. OsAir denies the allegations contained in paragraph 32.

33. OsAir denies the allegations contained in paragraph 33.

34. OsAir admits the allegations contained in paragraph 34.

35. OsAir lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 35.

Loans Extended by Diane Osborne to the Debtor and Affiliates

36. OsAir denies the allegations contained in paragraph 36. OsAir admits there were several loans by Diane Osborne or her trust to the Debtor or entities he controlled.

37. OsAir lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 37. OsAir admits there were several loans by Diane Osborne or her trust to the Debtor or entities he controlled.

38. OsAir denies the allegations contained in paragraph 38. except that the Debtor admits he and his trust pledged shares in Osborne, Inc. to Diane Osborne, but the stated numbers may not be the actual number of shares pledged.

39. OsAir lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 39.

40. OsAir denies the allegations contained in paragraph 40. OsAir admits the allegation that Diane Osborne extended the second loan to the Debtor.

41. OsAir denies the allegations contained in paragraph 41. Periodic payments of interest were made on all the loans to Diane Osborne from the time the loans were incurred until November 2017. OsAir admits this loan was made.

42. OsAir denies the allegations contained in paragraph 42. Periodic payments of interest were made on all the loans to Diane Osborne from the time the loans were incurred until November 2017. OsAir admits this loan was made.

43. OsAir admits the allegations contained in paragraph 43.

44. OsAir admits the allegations contained in paragraph 44.

45. OsAir denies the allegations contained in paragraph 45. Periodic payments of interest were made on all the loans to Diane Osborne from the time the loans were incurred until November 2017. OsAir admits this loan was made.

46. OsAir admits the allegations contained in paragraph 46.

47. OsAir lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 47.

48. OsAir lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 48. OsAir admits that there was a loan to Nathan Properties by Diane Osborne.

49. OsAir denies the allegations contained in paragraph 49. Periodic payments of interest were made on all the loans to Diane Osborne from the time the loans were incurred until November 2017. OsAir admits this loan was made.

50. OsAir admits the allegations contained in paragraph 50.

51. OsAir admits the allegations contained in paragraph 51.

52. OsAir denies the allegations contained in paragraph 52. Periodic payments of interest were made on all the loans to Diane Osborne from the time the loans were incurred until November 2017. OsAir admits this loan was made.

53. OsAir admits the allegations contained in paragraph 53.

54. OsAir lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 54. OsAir admits that there was a loan to Mentor Condos by Diane Osborne.

55. OsAir denies the allegations contained in paragraph 55. Periodic payments of interest were made on all the loans to Diane Osborne from the time the loans were incurred until November 2017. OsAir admits this loan was made.

56. OsAir admits the allegations contained in paragraph 56.

57. OsAir admits the allegations contained in paragraph 57.

February 25, 2016 Loan Agreement

- 58. OsAir admits the allegations contained in paragraph 58.
- 59. OsAir admits the allegations contained in paragraph 59.
- 60. OsAir admits the allegations contained in paragraph 60.
- 61. OsAir admits the allegations contained in paragraph 61.
- 62. OsAir denies the allegations contained in paragraph 62.
- 63. OsAir denies the allegations contained in paragraph 63. Periodic payments of interest were made on all the loans to Diane Osborne from the time the loans were incurred until November 2017.

- 64. OsAir admits the allegations contained in paragraph 64.
- 65. OsAir admits the allegations contained in paragraph 65.
- 66. OsAir admits the allegations contained in paragraph 66.

Subordination Of HSL Mortgage

- 67. OsAir admits the allegations contained in paragraph 67.
- 68. OsAir admits the allegations contained in paragraph 68.

**Diane Osborne's and DMO Trusts Continuous Release of Collateral
for Little or No Consideration**

- 69. OsAir denies the allegations contained in paragraph 69.
- 70. OsAir denies the allegations contained in paragraph 70.
- 71. OsAir admits the allegations contained in paragraph 71.
- 72. OsAir admits the allegations contained in paragraph 72.
- 73. OsAir lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 73.

74. OsAir lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 74.

75. OsAir admits the allegations contained in paragraph 75.

76. OsAir denies the allegations contained in paragraph 76.

Diane Osborne's and DMO's Trusts Failure to Pursue Collection Remedies

77. OsAir denies the allegations contained in paragraph 77. Debtor made periodic monthly payments of interest on all the loans to Diane Osborne from the time the loans were incurred until November 2017.

78. OsAir admits the allegations contained in paragraph 78.

79. OsAir denies the allegations contained in paragraph 79.

80. OsAir denies the allegations contained in paragraph 80. OsAir admits that sometimes substitute collateral was provided to enable the proceeds of a sale to be freed for other uses.

81. OsAir admits the allegations contained in paragraph 81.

82. OsAir denies the allegations contained in paragraph 82.

83. OsAir lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 83.

Diane Osborne and DMO's Trusts Failure to Conduct Adequate Due Diligence or to Keep Adequate Records

84. OsAir lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 84.

85. OsAir lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 85.

86. OsAir lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 86.

87. OsAir lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 87.

88. OsAir lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 88.

The Debtor's Insolvency

89. OsAir denies the allegations contained in paragraph 89.

90. OsAir denies the allegations contained in paragraph 90.

91. OsAir denies the allegations contained in paragraph 91. OsAir admits those are the amounts on the Debtor's Schedules as to the amounts of the Debtor's assets and liabilities on the Petition Date.

92. OsAir denies the allegations contained in paragraph 92. OsAir admits there were many judgment liens taken against the Debtor including those cited by the Plaintiff in this paragraph.

93. OsAir lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 93.

Count I

94. OsAir incorporates by reference as if fully rewritten here its answers to paragraphs 1 through this paragraph 94.

95. OsAir admits the allegations contained in paragraph 95.

96. OsAir admits the allegations contained in paragraph 96.

97. OsAir admits the allegations contained in paragraph 97.

98. OsAir denies the allegations contained in paragraph 98.
99. OsAir denies the allegations contained in paragraph 99.
100. OsAir denies the allegations contained in paragraph 100.
101. OsAir denies the allegations contained in paragraph 101.
102. OsAir denies the allegations contained in paragraph 102.
103. OsAir denies the allegations contained in paragraph 103.
104. OsAir denies the allegations contained in paragraph 104. OsAir admits the allegation the RMO, Inc. has no creditors.
105. OsAir denies the allegations contained in paragraph 105.
106. OsAir denies the allegations contained in paragraph 106.

Count II

107. OsAir incorporates by reference as if fully rewritten here its answers to paragraphs 1 through this paragraph 107.
108. OsAir admits the allegations contained in paragraph 108.
109. OsAir denies the allegations contained in paragraph 109.
110. OsAir denies the allegations contained in paragraph 110.
111. OsAir denies the allegations contained in paragraph 111.
112. OsAir denies the allegations contained in paragraph 112.
113. OsAir denies the allegations contained in paragraph 113.
114. OsAir denies the allegations contained in paragraph 114.
115. OsAir denies the allegations contained in paragraph 115.
116. OsAir denies the allegations contained in paragraph 116.

Count III

117. OsAir incorporates by reference as if fully rewritten here its answers to paragraphs 1 through this paragraph 117.

118. OsAir denies the allegations contained in paragraph 118. Debtor has admitted that he and his trust pledged shares in Osborne, Inc. to Diane Osborne, but the stated numbers may not be the actual number of shares pledged.

119. OsAir admits the allegations contained in paragraph 119.

120. OsAir denies the allegations contained in paragraph 120.

121. OsAir admits the allegations contained in paragraph 121.

122. OsAir denies the allegations contained in paragraph 122.

123. OsAir denies the allegations contained in paragraph 123.

124. OsAir admits the allegations contained in paragraph 124.

125. OsAir admits the allegations contained in paragraph 125.

126. OsAir denies the allegations contained in paragraph 126.

127. OsAir denies the allegations contained in paragraph 127.

128. OsAir denies the allegations contained in paragraph 128.

129. OsAir denies the allegations contained in paragraph 129.

130. OsAir denies the allegations contained in paragraph 130.

Count IV

131. OsAir incorporates by reference as if fully rewritten here its answers to paragraphs 1 through 131.

132. OsAir admits the allegations contained in paragraph 132.

133. OsAir denies the allegations contained in paragraph 133.

- 134. OsAir denies the allegations contained in paragraph 134.
- 135. OsAir denies the allegations contained in paragraph 135.
- 136. OsAir denies the allegations contained in paragraph 136.
- 137. OsAir denies the allegations contained in paragraph 137.
- 138. OsAir admits the allegations contained in paragraph 138.
- 139. OsAir admits the allegations contained in paragraph 139.
- 140. OsAir denies the allegations contained in paragraph 140.

Count V

141. OsAir incorporates by reference as if fully rewritten here its answers to paragraphs 1 through this paragraph 141.

- 142. OsAir admits the allegations contained in paragraph 142.
- 143. OsAir denies the allegations contained in paragraph 143.
- 144. OsAir denies the allegations contained in paragraph 144.
- 145. OsAir denies the allegations contained in paragraph 145.
- 146. OsAir denies the allegations contained in paragraph 146.
- 147. OsAir denies the allegations contained in paragraph 147.
- 148. OsAir denies the allegations contained in paragraph 148.
- 149. OsAir denies the allegations contained in paragraph 149.
- 150. OsAir denies the allegations contained in paragraph 150.
- 151. OsAir denies the allegations contained in paragraph 151.
- 152. OsAir denies the allegations contained in paragraph 152.
- 153. OsAir denies the allegations contained in paragraph 153.

Count VI

154. OsAir incorporates by reference as if fully rewritten here its answers to paragraphs 1 through this paragraph 154.

155. OsAir denies the allegations contained in paragraph 155.

156. OsAir denies the allegations contained in paragraph 156.

157. OsAir denies the allegations contained in paragraph 157.

158. OsAir denies the allegations contained in paragraph 158.

159. OsAir denies the allegations contained in paragraph 159.

Count VII

160. OsAir incorporates by reference as if fully rewritten here its answers to paragraphs 1 through this paragraph 160.

161. OsAir denies the allegations contained in paragraph 161.

162. OsAir admits the allegations contained in paragraph 162.

163. OsAir denies the allegations contained in paragraph 163.

164. OsAir denies the allegations contained in paragraph 164.

165. OsAir denies the allegations contained in paragraph 165.

Count VIII

166. OsAir incorporates by reference as if fully rewritten here its answers to paragraphs 1 through this paragraph 166.

167. OsAir denies the allegations contained in paragraph 167.

168. OsAir admits the allegations contained in paragraph 168.

169. OsAir denies the allegations contained in paragraph 169.

170. OsAir denies the allegations contained in paragraph 170.

171. OsAir denies the allegations contained in paragraph 171.

Count IX

172. OsAir incorporates by reference as if fully rewritten here its answers to paragraphs 1 through this paragraph 172.

173. OsAir admits the allegations contained in paragraph 173.

174. OsAir denies the allegations contained in paragraph 174.

175. OsAir denies the allegations contained in paragraph 175.

176. OsAir denies the allegations contained in paragraph 176.

177. OsAir denies the allegations contained in paragraph 177.

178. OsAir denies the allegations contained in paragraph 178.

179. OsAir denies the allegations contained in paragraph 179.

180. OsAir denies the allegations contained in paragraph 180.

181. OsAir denies the allegations contained in paragraph 181.

182. OsAir denies the allegations contained in paragraph 182.

183. OsAir denies the allegations contained in paragraph 183.

184. OsAir denies the allegations contained in paragraph 184.

Count X

185. OsAir incorporates by reference as if fully rewritten here its answers to paragraphs 1 through this paragraph 185.

186. OsAir denies the allegations contained in paragraph 186.

187. OsAir denies the allegations contained in paragraph 187.

188. OsAir denies the allegations contained in paragraph 188.

189. OsAir denies the allegations contained in paragraph 189.

Count XI

190. OsAir incorporates by reference as if fully rewritten here its answers to paragraphs 1 through this paragraph 190.

191. OsAir denies the allegations contained in paragraph 191.

192. OsAir admits the allegations contained in paragraph 192.

193. OsAir denies the allegations contained in paragraph 193.

194. OsAir denies the allegations contained in paragraph 194.

195. OsAir admits the allegations contained in paragraph 195.

196. OsAir denies the allegations contained in paragraph 196.

197. OsAir denies the allegations contained in paragraph 197.

Count XII

198. OsAir incorporates by reference as if fully rewritten here its answers to paragraphs 1 through this paragraph 198.

199. OsAir denies the allegations contained in paragraph 199.

200. OsAir denies the allegations contained in paragraph 200.

201. OsAir denies the allegations contained in paragraph 201.

202. OsAir denies the allegations contained in paragraph 202.

203. OsAir denies the allegations contained in paragraph 203.

Count XIII

204. OsAir incorporates by reference as if fully rewritten here its answers to paragraphs 1 through this paragraph 204.

205. OsAir denies the allegations contained in paragraph 205.

206. OsAir denies the allegations contained in paragraph 206.

207. OsAir denies the allegations contained in paragraph 207.

208. OsAir denies the allegations contained in paragraph 208.

Count XIV

209. OsAir incorporates by reference as if fully rewritten here its answers to paragraphs 1 through this paragraph 209.

210. OsAir denies the allegations contained in paragraph 210.

211. OsAir denies the allegations contained in paragraph 211.

212. OsAir denies the allegations contained in paragraph 212.

213. OsAir denies the allegations contained in paragraph 213.

Count XV

214. OsAir incorporates by reference as if fully rewritten here its answers to paragraphs 1 through this paragraph 214.

215. OsAir denies the allegations contained in paragraph 215.

216. OsAir admits the allegations contained in paragraph 216.

217. OsAir denies the allegations contained in paragraph 217.

218. OsAir denies the allegations contained in paragraph 218. for lack of knowledge.

219. OsAir denies the allegations contained in paragraph 219.

220. OsAir denies the allegations contained in paragraph 220.

221. OsAir denies the allegations contained in paragraph 221.

Count XVI

222. OsAir incorporates by reference as if fully rewritten here its answers to paragraphs 1 through this paragraph 222.

223. OsAir denies the allegations contained in paragraph 223.

224. OsAir denies the allegations contained in paragraph 224.

225. OsAir denies the allegations contained in paragraph 225.

Count XVII

226. OsAir incorporates by reference as if fully rewritten here its answers to paragraphs 1 through this paragraph 226.

227. OsAir denies the allegations contained in paragraph 227.

228. OsAir admits the allegations contained in paragraph 228.

229. OsAir admits the allegations contained in paragraph 229.

230. OsAir admits the allegations contained in paragraph 230.

231. OsAir denies the allegations contained in paragraph 231.

Count XVIII

232. OsAir incorporates by reference as if fully rewritten here its answers to paragraphs 1 through this paragraph 232.

233. OsAir admits the allegations contained in paragraph 233.

234. OsAir denies the allegations contained in paragraph 234.

235. OsAir denies the allegations contained in paragraph 235.

236. OsAir denies the allegations contained in paragraph 236.

237. OsAir denies the allegations contained in paragraph 237.

Count XIX

238. OsAir incorporates by reference as if fully rewritten here its answers to paragraphs 1 through this paragraph 238.

239. OsAir admits the allegations contained in paragraph 239.

240. OsAir denies the allegations contained in paragraph 240.

241. OsAir denies the allegations contained in paragraph 241.

242. OsAir denies the allegations contained in paragraph 242.

243. OsAir admits the allegations contained in paragraph 243.

Count XX

244. OsAir incorporates by reference as if fully rewritten here its answers to paragraphs 1 through this paragraph 244.

245. OsAir denies the allegations contained in paragraph 245.

246. OsAir denies the allegations contained in paragraph 246.

Count XXI

247. OsAir incorporates by reference as if fully rewritten here its answers to paragraphs 1 through this paragraph 247.

248. OsAir denies the allegations contained in paragraph 248.

249. OsAir denies the allegations contained in paragraph 249.

250. OsAir denies the allegations contained in paragraph 250.

251. OsAir denies the allegations contained in paragraph 251.

AFFIRMATIVE DEFENSES

252. OsAir incorporates by reference its answer to the preceding paragraphs as if fully rewritten herein.

253. The Complaint fails to state a claim upon which relief may be granted.

254. The Complaint misrepresents facts in the allegations presented.

255. OsAir reserves the right to assert additional defenses as discovery and this matter proceeds.

WHEREFORE, OsAir respectfully requests the court dismiss the Trustee's Complaint in its entirety, and for any such other relief to which the OsAir may be entitled.

Respectfully Submitted,

LEVINSON LLP

/s/Jeffrey M. Levinson

Jeffrey M. Levinson (OBR 0046746)

55 Public Square, Suite 1750

Cleveland, OH 44113

(216) 514-4935

(216) 532-2212 Fax

jml@jml-legal.com

Counsel for OsAir, Inc.

Dated: April 10, 2020

CERTIFICATE OF SERVICE

A copy of this Answer was served this 10th day of April, 2020, via the Court's ECF system on all parties or their counsel of record as follows.

Marcel C. Duhamel
mcduhamel@vorys.com
Attorney for the Trustee

Bryan J. Farkas
bjfarkas@vorys.com
Attorney for the Trustee

Carrie M. Brosius
cmbrosius@vorys.com
Attorney for the Trustee

Patrick R. Akers
prakers@vorys.com
Attorney for the Trustee

Michael J. Moran, Esq.
mike@gibsonmoran.com
Attorney for Diane Osborne

Fred Schwieg
fschwieg@schwieglaw.com
Attorney for Debtor

/s/Jeffrey M. Levinson
Jeffrey M. Levinson (OBR 0046746)